

Exhibit 7

Nazar v. Harbor Freight Tools USA, Inc.

Mark R. Newton, CPA

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WASHINGTON</p> <hr/> <p>VITALIY VLADIMIRAVICH NAZAR,) individually,) Plaintiff(s),) vs.) 2:18-cv-00348 HARBOR FREIGHT TOOLS USA,) INC., a Delaware corporation,) JOHN DOES 1-100) Defendant(s).)</p> <hr/> <p style="text-align: center;">VIDEO CONFERENCE VIDEO DEPOSITION UPON ORAL EXAMINATION OF MARK R. NEWTON, CPA</p> <hr/> <p style="text-align: center;">Taken at 3255 N. Ladera Circle Mesa, Arizona</p> <p style="text-align: center;">Defendant objects to the use of the transcript if the witness is available to testify - FRE 804, FRC 32(a)</p> <p>DATE TAKEN: APRIL 21, 2020 REPORTED BY: PATSY D. JACOY, CCR 2348</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">DEPOSITION OF MARK R. NEWTON, CPA EXAMINATION INDEX</p> <p>1 2 3 4 5 EXAMINATION BY: PAGE(S) 6 BY MS. LUKE 4 7 8 9 EXHIBIT INDEX 10 EXHIBITS FOR IDENTIFICATION PAGE 11 Exhibit A 90-5 - 3.9.20 Newton Report 71 12 Exhibit B HSNO Seattle Rate Schedule 71 13 Exhibit C 2020-04-17 Pltf NOD of 71 14 Expert Newton 15 Exhibit D 105-1 - 4.16.20 Newton Supp 71 16 Report 17 Exhibit E Nazar Schedules 4.16.20xlsx 71 18 Exhibit F Updated report by Newton 71 19 Exhibit G Addendum to Exhibit A 71 20 Exhibit H Net discount rate of Life 71 21 Care Plan offered by Gann 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 2 3 FOR THE PLAINTIFF: (Present via video conference) 4 5 RACHEL M. LUKE Friedman Rubin PLLP 1109 1st Avenue, Suite 501 6 Seattle, WA 98101 206.501.4446 7 rachel@friedmanrubin.com 8 9 FOR THE DEFENDANT: (Present via video conference) 10 LAURA A. MARTIN Gerber Ciano Kelly Brady, LLP 11 228 Park Avenue South, Suite 97592 New York, NY 10003-1502 12 914.406.6479 lmartin@gerberciano.com 13 14 ALSO PRESENT: NONE 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 MESA, ARIZONA; APRIL 21, 2020 2 10:05 A.M. 3 --oOo-- 4 5 MARK R. NEWTON, CPA, witness herein, having been 6 first duly sworn on oath, 7 was examined and testified 8 as follows: 9 10 EXAMINATION 11 BY MS. LUKE: 12 Q. All right. Mr. Newton, good morning. 13 A. Good morning. 14 Q. My name is Rachel Luke. I represent the 15 plaintiff Vitaliy Nazar in this matter. 16 MS. LUKE: And before I start 17 questioning you I just want to note that the parties 18 have stipulated that the court reporter can administer 19 the oath remotely and virtually due to the ongoing 20 COVID-19 pandemic under FRCP 29(a). We understand that 21 Mr. Newton is in Arizona while I am in Washington 22 state, I believe our court reporter is also in 23 Washington state, and defense counsel is in New York. 24 MS. MARTIN: Agree. 25 MS. LUKE: Thank you.</p>

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<p style="text-align: right;">Page 5</p> <p>1 Q. (BY MS. LUKE) Just as a reminder, Mr. Newton, 2 I know that you have been deposed many times or have 3 testified many times, but I think with these virtual 4 depositions it's really important that we do not 5 interrupt each other to the best we can. Feel free to 6 ask for a break if you need one. And I will have many 7 inartful questions, so please feel free to ask for 8 clarification if you don't understand what I'm asking 9 or a question. 10 Please state your name -- your full name and 11 your professional address. 12 A. Mark Richard Newton, and my professional 13 address is -- JS Held is my company and it's 3535 14 Factoria Boulevard Southeast, Suite 440, Bellevue, 15 Washington and the zip is 98006. 16 Q. Great. And I'm going to have you pull an 17 exhibit, I'm going to mark what's titled 90-5 - 3.9.20 18 Newton Report. You should have that there. 19 A. Yes. 20 Q. And I'm going to mark that as Exhibit A to 21 your deposition. 22 A. Okay. 23 Q. And if you want to scroll through that report 24 for just a second, does this look to be a true and 25 accurate version of your report that is dated March 9,</p>	<p style="text-align: right;">Page 7</p> <p>1 A. I got that license, let's see, two years ago. 2 I'm not -- I don't recall exactly when, probably about 3 three or four years ago. 4 Q. Okay. And aside from that Arizona license 5 that should now be included, is there anything else in 6 here that is missing for the most current version of 7 your CV? 8 A. I think the only other thing is under 9 professional associations I still have -- I've been 10 having difficulty renewing the National Association of 11 Forensic Economists on their website, so I need to -- 12 technically I'm not in that. I need to, you know, pay 13 my dues and rejoin that, but I've been a member of that 14 for many years. 15 The last item on the professional associations 16 called Loss Executives Association, I'll have to check, 17 I may not be a member of that because of the situation 18 with the company, for JS Held, and that organization 19 has a limitation of how many what they call associate 20 members can be -- 21 Q. I'm sorry, Mr. Newton, I'm getting a lot of 22 feedback on your end and I don't know -- or skipping. 23 I'm not sure if I'm the only one. 24 COURT REPORTER: No, I am as well. 25 (Discussion off the record.)</p>
<p style="text-align: right;">Page 6</p> <p>1 2020? 2 A. Yes, it appears to be just scanning through 3 it, yeah. 4 Q. Okay. And the first part of this document 5 includes your -- well, actually Exhibit 1 to your 6 report is your CV. 7 A. Yes. 8 Q. And I believe that begins on page 9 of the PDF 9 if you want to scroll down to that? 10 A. Correct, I got it. 11 Q. Is that CV a complete and accurate and most 12 recent copy? 13 A. Yeah, it's probably not exactly 100 percent 14 accurate because I -- in this version I left off my CPA 15 license because I submitted my application late and so 16 for -- I'm not sure, but for a short period I didn't 17 technically have my license so that's why I left it off 18 of there. I believe I'm approved, although I'm not 100 19 percent sure because I've never received a letter from 20 them, so when I went on the website in Arizona it 21 indicates my license continues through 2022, February 22 2022. So they must have approved it, but I haven't 23 received a notice in the mail. 24 Q. Okay. And is this the first time you've been 25 licensed in Arizona or was this a renewal?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. (BY MS. LUKE) Okay. Mr. Newton, I think you 2 were explaining some updates to your CV and you were 3 discussing some changes under professional 4 associations. Can you explain that again? 5 A. Yes. On the National Association of Forensic 6 Economists, I need to renew that. So I think 7 technically that's lapsed, but I intend to renew that. 8 I was having difficulty with their website, so I need 9 to follow through on that. I've been a member of that 10 for probably at least 15 to 20 years. 11 The Loss Executives Association, I may not be 12 a member of that any longer because my old company, 13 HSNO, was acquired by JS Held, and that organization 14 has a limitation on how many what they call associate 15 members are allowed in the organization, and I'll have 16 to double-check on that, but I had volunteered to give 17 that up to other people in JS Held if necessary. 18 Q. Okay. And just going back to your licenses in 19 Arizona, do you know offhand your license number for 20 Arizona? 21 A. It's -- no, not offhand. 22 Q. Okay. 23 A. I could find it at some point during the break 24 if you want. 25 Q. Sure, that would be great. And as far as the</p>

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<p style="text-align: right;">Page 9</p> <p>1 recently presented seminars, did you have any update 2 since that 2017 Wind Energy Losses seminar? 3 A. No, I don't have any other -- I don't believe 4 so, any others after that. 5 Q. What was the -- I think the third one down -- 6 no, sorry, second one down, Econonuggets - Personal 7 Injury, can you tell me what was that presentation or 8 seminar about? 9 A. That was -- it was kind of a variety of 10 subjects involving personal injury. I can't remember 11 exactly the topics. I just recall that I covered a 12 number of things that I thought would be interesting to 13 lawyers dealing with personal injury cases. The WDTL 14 is the Washington Defense Trial Lawyers Association. 15 Q. Okay. And then going down a little bit 16 further, I noticed there was Preventing Pain - Punitive 17 Damages? 18 A. Yes. 19 Q. Can you tell me about what did you present on 20 for that seminar? 21 A. That seminar was -- I have a vague 22 recollection. That was back in 2008, so -- but it was 23 discussing sort of the financial elements of looking at 24 punitive damages. So, in other words, from a forensic 25 accounting perspective analyzing financial statements</p>	<p style="text-align: right;">Page 11</p> <p>1 you look in the dictionary it just means that you 2 really testify in court about your area of expertise. 3 It's come to be thought of as investigative as well 4 because of the TV shows that have forensic doctors and 5 medical people, that kind of thing, but it's sort of 6 thought of now as investigative, but I think of it more 7 as related to testifying in court for the most part, 8 but it's extended even to the areas of services my 9 company provides or people like me provide in 10 non-litigation contexts. Like we do a lot of insurance 11 claim work for insurance companies on property claims 12 and they usually call us forensic accountants even 13 though most of the time those are not in litigation. 14 Q. And so your firm, JS Held, only does forensic 15 accounting and not the audits or taxes that we hear 16 about CPAs doing in other contexts? 17 A. Well, the forensic accounting division, yes, 18 that's true. The forensic accounting division which 19 I'm part of -- HSNO, which was purchased by JS Held 20 about a year ago, became essentially the forensic 21 accounting division for JS Held, and that division is 22 strictly what I would call forensic accounting in 23 general and we don't do any kind of regular audits and 24 tax and bookkeeping, that kind of thing. 25 The non -- there are a lot of other divisions</p>
<p style="text-align: right;">Page 10</p> <p>1 of a defendant who might be subject to punitive 2 damages. 3 Q. Okay. And what -- what is your profession? 4 A. Well, I'm a certified public accountant and my 5 specialty has been -- really for essentially my entire 6 career since 1974 been in forensic accounting and 7 economics, although back when I started we didn't -- I 8 don't think anybody used the term "forensic accountant" 9 back in the '70s, that's a term that came up later, but 10 pretty much from the beginning I've been involved with 11 determining damages. 12 Q. Okay. So as a CPA do you ever help prepare 13 taxes or anything like that? 14 A. No, I don't do that professionally. I -- I 15 don't think I ever did taxes professionally. Back when 16 we started, when I started with the company which we 17 called HNSO Accountancy in 1974, we did do some -- the 18 firm did taxes and some audits and regular sort of 19 accounting which I did some of that for my experience, 20 but within about four or five years after I started the 21 company pretty much was 100 percent forensic 22 accounting. 23 Q. Okay. And what exactly is forensic 24 accounting? 25 A. Well, it -- you know, the term "forensic" when</p>	<p style="text-align: right;">Page 12</p> <p>1 in JS Held that are not related to accounting, 2 including construction consulting and 3 environmentalists, environmental consulting, 4 toxicology, there's a lot of different services the 5 company provides overall. 6 Q. And is most of that work or a large portion of 7 that work for litigation purposes? 8 A. I believe so, yes, they do offer that, the 9 other services for litigation purposes, yes. 10 Q. And do you do any other work other than 11 forensic accounting? 12 A. For JS Held? 13 Q. For JS Held or outside of your capacity as a 14 partner at JS Held. 15 A. Yeah, JS Held -- well, technically I'm not a 16 partner. Since last June I'm only an employee. 17 Q. I understand. 18 A. I'm no longer an owner of the business. 19 Q. I understand. 20 A. So it's a little different role than I had for 21 about 40 years at HSNO, but anyway, I'm just an 22 employee and I do forensic accounting. Outside of 23 working for JS Held I have some business interests in a 24 franchise -- two franchise businesses that -- and a 25 third upcoming that my wife and I own and that she</p>

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<p>1 runs.</p> <p>2 Q. Okay. Is that --</p> <p>3 A. I kind of do the accounting for her on those.</p> <p>4 Q. Okay. But those aren't involved with Harbor</p> <p>5 Freight Tools at all; is that correct?</p> <p>6 A. I'm sorry, I didn't quite catch that question.</p> <p>7 Q. Your other businesses that you're involved in</p> <p>8 don't have any contingency with Harbor Freight Tools?</p> <p>9 A. I didn't quite -- I can't quite hear the last</p> <p>10 two words you said.</p> <p>11 Q. Do your other businesses have anything to do</p> <p>12 with Harbor Freight Tools? Do they involve Harbor</p> <p>13 Freight Tools?</p> <p>14 A. Oh, no, no, no.</p> <p>15 Q. Okay. I want to go to another exhibit. I'm</p> <p>16 going to mark as Exhibit B, it's a document that says</p> <p>17 HSNO Seattle Rate Schedule 2019.</p> <p>18 A. Okay.</p> <p>19 Q. Let me know when you have that open.</p> <p>20 A. I have that open.</p> <p>21 Q. Okay. Are the rates listed here your current</p> <p>22 rates for this case?</p> <p>23 A. No. And I'm curious why you have this</p> <p>24 particular page because we are not HSNO any longer,</p> <p>25 we're JS Held, and the rates are somewhat -- somewhat</p>	<p>1 Q. Okay. Did anyone else from either HSNO or</p> <p>2 from JS Held or even outside of that help you work on</p> <p>3 your case? Did anyone else bill any time?</p> <p>4 A. Yes. The -- I believe the primary person that</p> <p>5 helped me with the calculations is George -- a guy</p> <p>6 named George McLaughlin who I refer to as a senior</p> <p>7 economist. I think his title in JS Held is something</p> <p>8 like -- let's see, an AVP, assistant vice president</p> <p>9 maybe, but he did a fair amount of the work for me on</p> <p>10 this case. And then also early on I had another</p> <p>11 associate, and I think his title is -- his name is</p> <p>12 Brenden Howell and he was -- he's an analyst with JS</p> <p>13 Held and he had prepared -- or started to prepare some</p> <p>14 of the calculations.</p> <p>15 Q. Okay. So I'm going to back up a little bit.</p> <p>16 I think you mentioned you're an executive vice</p> <p>17 president, VP, at JS Held. Does that entail anything</p> <p>18 other than your forensic accounting work that you're</p> <p>19 testifying about today?</p> <p>20 A. Oh, you mean do I have administrative duties,</p> <p>21 that sort of thing?</p> <p>22 Q. Yeah.</p> <p>23 A. Not really. I -- I'm kind of left out of</p> <p>24 management, so despite the title, I really don't have</p> <p>25 any management responsibilities to speak of other than</p>
Page 14	Page 16
<p>1 different than reflected here.</p> <p>2 Q. Okay. So can you just let me -- what is your</p> <p>3 deposition or trial testimony per hour for you? I --</p> <p>4 A. 550 --</p> <p>5 Q. -- understand it's not -- I'm sorry.</p> <p>6 A. Yeah, sorry. \$550 per hour is my testifying</p> <p>7 rate.</p> <p>8 Q. And at your current position at JS Held, is</p> <p>9 there a kind of hierarchy of senior partner, partner,</p> <p>10 senior manager, manager like there is on this document?</p> <p>11 A. There's a hierarchy but different terminology.</p> <p>12 Q. Okay.</p> <p>13 A. So, for instance, I'm a -- I don't have it</p> <p>14 memorized, I'm sorry. I am an executive vice president</p> <p>15 which is, I think, the highest level, and then you'll</p> <p>16 have senior or vice presidents or assistant vice</p> <p>17 presidents. There's a lot of vice presidents in JS</p> <p>18 Held.</p> <p>19 Q. Okay.</p> <p>20 A. And then you'll have associates. And so as</p> <p>21 you go down the level, of course, the billing rates</p> <p>22 decline with each level.</p> <p>23 Q. And do you have a different rate for your</p> <p>24 consultation rate per hour?</p> <p>25 A. Yes, I charge \$525 per hour.</p>	<p>1 managing the files that I'm working on. So I don't</p> <p>2 deal with HR issues or employees, things of that</p> <p>3 nature, so I'm kind of lucky in that regard.</p> <p>4 Q. And I think you mentioned that you thought</p> <p>5 George McLaughlin is an assistant vice president. What</p> <p>6 type of duties does an assistant vice president have at</p> <p>7 JS Held?</p> <p>8 A. Well, I don't -- I couldn't tell you across</p> <p>9 the board what the duties are for assistant vice</p> <p>10 presidents for JS Held, but for George, he's kind of</p> <p>11 like me, he doesn't really have any management or</p> <p>12 administrative functions to deal with. He mainly just</p> <p>13 works on cases and projects.</p> <p>14 Q. Okay. And is George still employed by JS</p> <p>15 Held?</p> <p>16 A. Is he still employed by them? Yes, uh-huh.</p> <p>17 Q. Okay. What about the analyst, Brenden Howell?</p> <p>18 A. Yes.</p> <p>19 Q. Is he still employed by them?</p> <p>20 A. Yes, he is.</p> <p>21 Q. Okay. George McLaughlin's billing rate, do</p> <p>22 you know that?</p> <p>23 A. Yes, \$325 per hour.</p> <p>24 Q. Okay. And what about Brenden Howell?</p> <p>25 A. I don't recall. It's -- it's approximately</p>

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<p style="text-align: right;">Page 17</p> <p>1 \$170 per hour. I'd have to look it up, but it's 2 something in that range. 3 Q. Have you prepared any invoices to Harbor 4 Freight Tools or to defense counsel in this case? 5 A. Yes. 6 Q. Do you know how much you've billed so far to 7 date? 8 A. Yes. I think it's -- well, as far as the 9 invoicing I think it's about \$7,200 is what has been 10 invoiced. 11 Q. Do you have any I guess other categories that 12 you would be billing under other than testimony or 13 consultation, maybe document review or some other 14 category? 15 A. You're asking me what kind of categories I 16 would be billing under? 17 Q. Yes. 18 A. In the time -- well, in the timekeeping system 19 we have NetSuite and -- yes, so they'll have kind of a 20 drop-down menu when I go to bill a file and it will 21 have things that I can choose from like document review 22 or reports or meetings. There are a variety of things 23 and so I click on one of those that I think is the most 24 appropriate and then -- then I put in my time, but I 25 also provide usually a description. It calls for --</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Since then what other testimony have you 2 given? 3 A. I -- I can never remember. Let me just -- I 4 can look at my calendar and just kind of look back. 5 Q. Well, if you can provide an updated list that 6 would be great. Is that something you would agree to? 7 A. Sure, yeah. 8 MS. MARTIN: We can provide that. 9 MS. LUKE: Thank you. 10 Q. (BY MS. LUKE) To your knowledge, have you 11 ever been excluded as an expert under a prior Daubert 12 challenge? 13 A. No. 14 Q. Have you ever been a party to a lawsuit? 15 A. No. 16 Q. Have you ever testified for or on behalf of 17 any attorneys involved in this case? 18 A. Well, when you say "on behalf of," you mean on 19 a personal level or are you talking about like this 20 where I'm testifying on behalf of Harbor Freight Tools? 21 Q. On behalf of one of their clients. 22 A. Oh, okay. I did see that -- it looked like on 23 one of the documents I saw Foley Mansfield is involved 24 in this matter and there was an attorney -- I can't 25 remember the attorney's name now, but it's somebody</p>
<p style="text-align: right;">Page 18</p> <p>1 there's a little box for describing your time as well. 2 Q. Well, I guess my question is, is that I think 3 you said that your deposition or trial testimony rate 4 is 550 an hour and then your consultation rate was 425 5 an hour I believe. Do you have any other rates that 6 you charge in this case? 7 A. Oh, no, 525 was my -- 8 Q. Okay. 9 A. -- you know, consulting rate. But no, it's -- 10 whenever I'm doing the non-testifying work I charge at 11 the \$525 per hour. 12 Q. All right. I'm going to go back to Exhibit A 13 again and I'm on page 12 of that PDF. 14 A. Okay. 15 Q. And this is your recent testimony list; is 16 that correct? 17 A. Yes. 18 Q. Is this the most up-to-date list? 19 A. It's probably -- it was up-to-date at the time 20 of the report. I probably have had a couple of other 21 testimonies since then, maybe depositions, I'm not sure 22 about trial but I think deposition perhaps. 23 Q. Okay. So the last testimony listed here was 24 February 21, 2020? 25 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 that I have worked with before testifying on cases for 2 in the past. 3 Q. And do you know approximately how many cases 4 you've testified on cases with that attorney? 5 A. No. I mean, actually I think that more often 6 I've worked with other Foley Mansfield attorneys on a 7 more regular basis. 8 Q. When did you -- when were you retained in this 9 case? 10 A. I don't recall, probably a couple months ago. 11 I'd have to go back and look. 12 Q. Can you identify the materials that you've 13 reviewed in preparation for your report that you've 14 offered in this case. 15 A. Sure. I'm going to refer to an exhibit in my 16 report that you have, I think, as Exhibit A, right, to 17 this deposition. 18 Q. Okay. 19 A. And let's see, that is on page 16 of the PDF, 20 and so I've listed out the items on here which include 21 the various discovery responses and interrogatories, 22 Mr. Nazar's deposition, Ms. Tapia's report that she 23 has. We have social security earnings records, IRS 24 records for tax returns for Mr. Nazar, some wage I 25 think pay stubs from Five Star Trucking, the second</p>

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<p style="text-align: right;">Page 21</p> <p>1 amended complaint, the Kutsar deposition Exhibit 4 2 which are employment records, and then the Washington 3 L&I records that's on my chart it's referred to as 4 worker compensation records. 5 In addition, I -- since I prepared that report 6 I also received a report from a Carl Gann who is a -- I 7 think a vocational rehabilitation expert, and I 8 utilized his information and his report for my 9 supplemental report that just came out. And I also 10 received Ms. Tapia's deposition which I read yesterday. 11 I think that covers it. 12 Now, we did also use some reference materials 13 for things like work life expectancy and so we accessed 14 that information as well. 15 Q. Okay. What -- I mean, can you tell me what 16 reference you were using for work life expectancy? 17 A. The Skoog-Ciecka tables from 2019 reports 18 which is the same source of information used by 19 Ms. Tapia. 20 Q. Okay. So when you wrote this report, it's 21 dated March 9, 2020, you did not have Mr. Gann's 22 information, that's correct? 23 A. That is correct. 24 Q. And did you have -- at this point did you have 25 Mr. Choppa -- his life care plan and report?</p>	<p style="text-align: right;">Page 23</p> <p>1 analysis or opinion, do you typically only look at the 2 life care plan and vocational report from whichever 3 side you're representing, here being the defense? 4 A. Not necessarily, no. Sometimes we assess 5 both. 6 Q. And I see that you have an exhibit to the 7 Kutsar deposition which were Mr. Nazar's employment 8 records. Did you have Mr. Kutsar's deposition 9 transcript? 10 A. I don't recall reading -- I don't think so. I 11 think I may just have the records themselves, but I 12 don't recall reading a deposition from him. 13 Q. Did you request to read that? 14 A. No. 15 Q. Let's see here. So you had sent -- after -- 16 since this March 9, 2020 report, you have received 17 Mr. Gann's report and you supplemented this report. 18 Have you had any consultation with Mr. Gann? 19 A. No. 20 Q. And that's neither by phone or email 21 correspondence? 22 A. Yeah, no, I've had no contact with Mr. Gann at 23 all. 24 Q. Do you typically consult with the vocational 25 rehabilitation expert in an injury case such as this</p>
<p style="text-align: right;">Page 22</p> <p>1 A. I don't believe so. I know that Ms. Tapia 2 refers to it in her report, but I don't think I 3 actually -- I don't recall having seen his report, so I 4 may not have it. 5 Q. Is it typically helpful for you to have a life 6 care plan that's proposed by a plaintiff for your 7 analysis? 8 A. If I'm asked -- 9 MS. MARTIN: Objection to form. 10 THE WITNESS: Oh, sorry. 11 MS. MARTIN: Go ahead. 12 A. It could be if I'm asked to utilize that 13 information to determine present value. Normally my 14 only role like Ms. Tapia was doing in her report 15 regarding life care plan is to take that information 16 and try to bring it to a present value, and so if I'm 17 asked to do that with the plaintiff's life care plan 18 proposal then I would need that report. And then, of 19 course, if I get one from a defense expert then I would 20 use that to prepare a present value of the life care 21 plan. 22 Q. (BY MS. LUKE) Did you request to have 23 Mr. Choppa's report? 24 A. No. 25 Q. So when you are preparing a forensic report or</p>	<p style="text-align: right;">Page 24</p> <p>1 when you're providing your report? 2 A. Not always, but quite often, yes. 3 Q. Is there a reason why you haven't consulted 4 with Mr. Gann? 5 A. Well, I think that in reading his report, just 6 reading his report, the information in there was 7 sufficient for me to use for my calculations without 8 speaking to him. 9 Q. Let's go -- I'm going to mark as Exhibit C the 10 document that says 2020-4-17 Plaintiff NOD of Expert 11 Newton. 12 A. This is the notice of video deposition? 13 Q. Yes. Have you seen this document before? 14 A. I believe so. I think I reviewed it 15 yesterday. 16 Q. Okay. At the very bottom it says: 17 Defendant's attorneys are reminded that they have 18 agreed to produce complete copies of their expert's 19 file in this matter at least three business days prior 20 to their expert's respective depositions. 21 Were you made aware of this agreement? 22 A. Yes, I believe I was aware of the three-day 23 time period. 24 MS. MARTIN: Note my objection. 25 MS. LUKE: Laura, what's your objection</p>

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<p style="text-align: right;">Page 25</p> <p>1 based on?</p> <p>2 MS. MARTIN: Seeks privileged</p> <p>3 information under the rules regarding expert discovery</p> <p>4 so he's already answered the question.</p> <p>5 Q. (BY MS. LUKE) So last night we received your</p> <p>6 new expert report. I'm going to go ahead and pull that</p> <p>7 as Exhibit D and mark that, and that should show up --</p> <p>8 it says 105-1 - 4.16.20 Newton Supp Report.</p> <p>9 A. Okay, I've got that open.</p> <p>10 Q. Great. We'll mark that as Exhibit D. And</p> <p>11 then let's go ahead and also at the same time mark as</p> <p>12 Exhibit E, there's some spreadsheets dated -- it says</p> <p>13 Nazar Schedules 4.16.20, let's mark that.</p> <p>14 A. Oh, the Excel files?</p> <p>15 Q. Yeah.</p> <p>16 A. The Excel file? Okay.</p> <p>17 Q. Okay. So this --</p> <p>18 MS. MARTIN: I'm sorry. Exhibit E is</p> <p>19 which one? I apologize.</p> <p>20 MS. LUKE: That's okay. That's the</p> <p>21 Nazar schedule dated 4.16.20.</p> <p>22 MS. MARTIN: Okay, thank you.</p> <p>23 MS. LUKE: Yep.</p> <p>24 Q. (BY MS. LUKE) For your supplemental report,</p> <p>25 does this document reflect your current opinions in</p>	<p style="text-align: right;">Page 27</p> <p>1 supplemental report?</p> <p>2 A. I believe I was asked to provide --</p> <p>3 MS. MARTIN: Again, objection, seeks</p> <p>4 privileged information, but you may answer.</p> <p>5 A. Okay. I -- my recollection is it would have</p> <p>6 been around the time I received Mr. Gann's report. I</p> <p>7 don't -- again, I don't have a specific recollection of</p> <p>8 that point.</p> <p>9 Q. (BY MS. LUKE) Okay. And did -- when you</p> <p>10 reviewed Mr. Gann's report as you were preparing this</p> <p>11 supplemental, did you disagree with any of Mr. Gann's</p> <p>12 opinions?</p> <p>13 A. The only thing that I sort of questioned a</p> <p>14 little bit was the -- but I haven't made any change</p> <p>15 related to it was the part of the life care plan</p> <p>16 calling for the health club, and just based on what I</p> <p>17 pay, the amount of \$63 a month seemed a little high.</p> <p>18 Also the assumption that Mr. Nazar would have that</p> <p>19 membership through -- I think through his life</p> <p>20 expectancy is probably a little too long, but even if I</p> <p>21 made those changes, they wouldn't amount to much --</p> <p>22 much difference really, so I didn't bother with it.</p> <p>23 Q. Has -- does this report dated April 16, 2020</p> <p>24 replace your March 9, 2020 report in its entirety as</p> <p>25 far as your opinions?</p>
<p style="text-align: right;">Page 26</p> <p>1 this case?</p> <p>2 A. Yes.</p> <p>3 Q. And I'm going to have you walk me through this</p> <p>4 in just a minute. I noticed that your report at</p> <p>5 Exhibit D and the schedules that were produced with</p> <p>6 your file last night which is Exhibit E are both dated</p> <p>7 April 16, 2020. Is that when you finalized this</p> <p>8 report?</p> <p>9 A. Yes, I believe so, yes.</p> <p>10 Q. Is -- is there any reason that you know of why</p> <p>11 they were not produced to plaintiff until last night?</p> <p>12 MS. MARTIN: Objection, seeks privileged</p> <p>13 information.</p> <p>14 THE WITNESS: Should I answer?</p> <p>15 MS. MARTIN: No.</p> <p>16 THE WITNESS: Okay.</p> <p>17 Q. (BY MS. LUKE) Did you -- but these were</p> <p>18 finalized on the 16th?</p> <p>19 A. Yes, I believe so.</p> <p>20 Q. When did you receive Mr. Gann's report?</p> <p>21 A. Let's see, I don't recall. I think about a</p> <p>22 week or so before that. May have been as early as</p> <p>23 April 6th, but I'd have to go back and check the emails</p> <p>24 to be sure about that.</p> <p>25 Q. And when were you asked to provide the</p>	<p style="text-align: right;">Page 28</p> <p>1 A. I don't think entirely, no. I think -- it's</p> <p>2 just a different set of assumptions. So the</p> <p>3 calculations and opinions I provide in my first report</p> <p>4 on March 9th are still applicable given the assumptions</p> <p>5 that I was making at that time. So it doesn't really</p> <p>6 change my opinion. It's just that now I have a new</p> <p>7 calculation based on a different assessment by Mr. Gann</p> <p>8 as far as the earning capacity potential for Mr. Nazar</p> <p>9 going forward.</p> <p>10 Q. Okay. So you don't have a changed opinion as</p> <p>11 far as, you know, calculating his past loss and future</p> <p>12 loss then?</p> <p>13 MS. MARTIN: Objection, asked and</p> <p>14 answered. You may answer again.</p> <p>15 A. Well, yeah, there is a difference between the</p> <p>16 two reports and so, in other words, I have a different</p> <p>17 opinion in the supplemental report based upon</p> <p>18 Mr. Gann's findings and his opinions than what are</p> <p>19 presented in my first report which were based primarily</p> <p>20 on Ms. Tapia's approach and she was using Mr. Choppa --</p> <p>21 or Choppa, I'm not sure how you pronounce it, but</p> <p>22 Mr. Choppa's report and information.</p> <p>23 Q. (BY MS. LUKE) So can you maybe walk me</p> <p>24 through these opinions? I believe they start on page 4</p> <p>25 of the PDF.</p>

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<p>1 A. And this would be which -- are you talking 2 about my first report or the second report? 3 Q. I'm sorry, that's your supplemental report, 4 Exhibit D. 5 A. Sure, okay. So you want to start on Schedule 6 1.0? 7 Q. Sure. I mean, if you can -- just because, you 8 know, it's been less than 24 hours since we received 9 this -- 10 A. Sure. 11 Q. -- if you can summarize your opinion and if I 12 have follow-ups I can do that. 13 A. Okay. Yeah, and it's -- there's sort of -- 14 it's set up similarly, but there's a -- you know, quite 15 a bit of a different result on this report based on 16 Mr. Gann's opinions and assessment. But it's a similar 17 setup on the subsequent schedule so -- but I'll start 18 on Schedule 1.0 which is page 8 of the PDF of the 19 exhibit. 20 Q. Okay. 21 A. And this is just a summary of the calculation, 22 and what I show are the losses and mitigation for the 23 past and future in total. You can see in the third 24 column over which is entitled Lost Wages As Diesel 25 Mechanic, all together for total damages I show a total</p>	<p>1 the various categories that Mr. Gann outlined in his 2 report. 3 Q. Okay. And as far as that increased earnings, 4 what -- what does that go to as far as how high does 5 that go? I know that there was a median -- there was 6 talk about median wages, 75th percentile. Where would 7 he land based on your calculations here? 8 A. Yes, what I did was to -- to -- let me just 9 check my footnotes to make sure I state this. So -- 10 and I'm referring to page -- Schedule 2.0, which is on 11 page 10 of the PDF. This is in the footnote area for 12 Schedule 2.0. 13 Q. Okay. 14 A. So what I did is once he graduates I assumed 15 that he would receive a job at the 10 percentile level 16 of earnings for the first two years. After that he 17 would graduate to 25 percentile level for three years. 18 Then I assumed he would then achieve a median wage 19 level starting after five years, and then after ten 20 years I assumed that he would obtain a -- he would 21 reach the 75 percent -- percentile level. 22 Q. Do you know -- since we're looking at page 10 23 here, do you know if these categories that Carl Gann 24 has outlined, architect, mechanical engineer, 25 electrical engineer, etcetera, do you know if those are</p>
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<p>1 lifetime damage over his work life of \$1,119,853, and 2 ultimately the mitigation earnings I show as an 3 equivalent amount so that there ends up being no loss, 4 and in reality, based on Mr. Gann's report, if 5 Mr. Nazar can get a four-year degree and obtain a 6 position in some of the careers that Mr. Gann mentioned 7 in his report, his earning potential over his lifetime 8 is much greater than what it would have been as a 9 diesel mechanic. So his overall earnings will exceed 10 the diesel mechanic earnings and that's shown on 11 schedule -- the next schedule. 12 Q. So in this schedule that we're looking at 13 right now, I think it's page 8 of Exhibit D, you have a 14 column that says Mitigation Earnings. What all is 15 included in mitigation earnings? I assume it's income? 16 A. Yeah. 17 Q. Assuming the four-year degree? 18 A. Correct, yes. So the mitigation earnings are 19 comprised of reimbursed or payments from Washington L&I 20 which I assume that he -- Mr. Nazar would be able to 21 receive through the end of his college education 22 period. And he has been receiving it up -- as far as I 23 know up to this date, so I assume that that would 24 continue. Then once he graduates from college then he 25 would then increase his earnings up to a wage based on</p>	<p>1 only inclusive of bachelor degree earners or do those 2 wages reflect people who have bachelor's plus a 3 master's or perhaps even a Ph.D. education? 4 A. I don't know. I assume that they related to a 5 four-year degree because that was my understanding of 6 what Mr. Gann was providing in his report, that 7 information. He indicated that Mr. Nazar would be 8 capable of getting a four-year degree and he indicated 9 these types of fields that he had the capability and 10 interest in potentially. 11 Q. Could -- you don't know which source that 12 Mr. Gann was relying on for that data? 13 A. No. 14 Q. Now, I believe in your previous report -- 15 actually let me pull this up. So I'm going to 16 Exhibit A and page 5 of that PDF. 17 A. Okay. 18 Q. The second bullet point from the very bottom, 19 the second sentence of that is you offered an 20 alternative -- and this is an assumption -- where 21 Mr. Nazar reaches a median wage level for a diesel 22 mechanic that does not increase after that except for 23 normal inflation. Why is it that in your previous 24 report we were talking about median levels and in your 25 most recent report we're talking about going up to the</p>

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1 75th percentile within, I think you said, five years?
2 A. Well, actually ten years.
3 Q. Ten years?
4 A. So it would be ten years that he -- yeah.
5 Well, I mean, I provided two alternatives in my first report.
6 The second of those was making the assumption that Mr.
7 Nazar would stabilize at the median level for
8 a diesel mechanic. The first, though, was using kind
9 of a similar ramp up of increased earnings based on the
10 percentile levels for diesel mechanics that Ms. Tapia
11 used in her report. So I was just offering an
12 alternative, a different way to look at it.
13 Q. So -- but you believe that with the additional
14 education -- or you're accepting, I guess, an
15 assumption that with the additional education Mr. Nazar
16 can get up to the 75th percentile in these professional
17 careers?
18 A. Yes, in my second report, yes, yes, and that's
19 according to Mr. Gann. Now, he -- Mr. Gann did not
20 provide the exact time frame over which Mr. Nazar would
21 have ultimately achieved the 75 percentile level. The
22 time frames over which he graduates to the level that I
23 just talked about in my footnote in that report is --
24 is just an estimate by myself in that regard.
25 Q. Okay. If we can go back to Exhibit D on page

1 8?
2 A. Yes.
3 Q. Just going back to that mitigation earnings, I
4 think you mentioned that you have included -- you've --
5 L&I payments, and so you assumed he'll continue to
6 receive that through college. What do you base that
7 assumption on?
8 A. I base that assumption on the fact that he has
9 been receiving it, and the assumption is is that he
10 still would not be working because of his injury at
11 that point. So I assumed that he will continue to
12 receive those benefits because of that.
13 Q. And then you said that it would also include
14 his earnings which would increase over time.
15 A. Yes.
16 Q. Does it include -- does it also include
17 benefits?
18 A. Let's see, yes, we've included benefits. If
19 you again look at page 10 of Exhibit D, the PDF 10,
20 you'll see that we've calculated the wages of the
21 different types of jobs for the various percentile
22 levels we discussed and then we add 29.9 percent as
23 benefits.
24 Q. And as far as the benefits, I guess, on that
25 line, 29.9, that's almost 30 percent. Is that typical

1 for someone to receive almost 30 percent of their
2 earnings as benefits?
3 A. Yes, particularly for these types of
4 positions, yes, 29.9 percent would be a, I think,
5 actually somewhat conservative average benefit level
6 for these types of professional positions.
7 Q. What is the source for that 29.9 or -- for the
8 data?
9 A. I believe -- you know, I don't recall. I'll
10 have to look that up. I didn't review that this
11 morning. I believe typically we would get it from
12 Bureau of Labor Statistics.
13 Q. Okay. Is there anything else you wanted to
14 walk me through with the most recent report in your
15 opinions?
16 A. Sure, yeah. I think if we look at page 9 of
17 the PDF, this is the -- sort of the guts of the
18 calculation showing all the information that leads to
19 the summary on Schedule 1.0, and so it just shows the
20 annual amounts for lost earnings, the annual amounts
21 for mitigation earnings and retraining, and then we
22 identify it for the period of time that -- the length
23 of time for each of the rows because not every row is
24 one year and then we show the discounted amounts.
25 Now, what I do want to point out is a change

1 that we talked about earlier this morning where I found
2 an error on the schedule. If you look at the middle
3 column under the heading Loss & Mitigation Portion of
4 Year, and then there's the Mitigation Earnings -
5 Retraining, and you'll see the first number is \$25,610.
6 Q. Yes.
7 A. Do you see that? That number should be -- I
8 can't remember the number, but it should have been --
9 we multiplied 25,610 by the figure in the third column
10 which says Period in Years 0.78, do you see that?
11 Q. Okay. So it was an adjustment because it
12 wasn't a full year?
13 A. Because it's not a full year. But when we did
14 the calculation we mistakenly treated it as a full
15 year. So that affects that number. The next two
16 numbers are okay because they're full year, but then
17 the same problem exists for that fourth column down
18 where it says \$27,040, that should have been multiplied
19 by 0.62.
20 Q. Okay.
21 A. So --
22 MS. LUKE: If you have the correct
23 version, if you want to screen share maybe we can mark
24 that as -- let's see, we're on Exhibit F.
25 MS. MARTIN: You should see it now and

relevant to
the credibility
of the experts
opinions
regarding
damages.

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<p style="text-align: right;">Page 37</p> <p>1 it should start with -- we're on the third column, top 2 line, three rows over should be 19,976; is that right, 3 Mr. Newton?</p> <p>4 THE WITNESS: Yes. 5 MS. MARTIN: Okay. 6 MS. LUKE: Okay. So if you can 7 circulate that and then Patsy can get that marked as 8 Exhibit F. 9 MS. MARTIN: Not a problem. 10 MS. LUKE: Thank you. 11 A. Now, that same issue affects one of the 12 schedules and one of the scenarios. The scenario I had 13 of the diesel mechanic at median wage that same mistake 14 occurs. 15 Q. (BY MS. LUKE) In the previous -- I'm sorry. 16 A. Yes. 17 Q. In the previous report from Exhibit A? 18 A. Yes. So there's a slight change to that 19 number where it increases the -- lowers the mitigation 20 so the loss calculation goes up by around \$30,000. 21 MS. MARTIN: One second here and I'll 22 share that with you as well. Is this what you're 23 referring to, Mr. Newton? 24 THE WITNESS: Is that -- yes, exactly, 25 yeah.</p>	<p style="text-align: right;">Page 39</p> <p>1 columns over to the right, that reflects the point at 2 which the cumulative mitigation earnings exceed the 3 cumulative losses that Mr. Nazar had suffered. So, in 4 other words, by the years 2030, Mr. Nazar would have 5 mitigation earnings of about \$650,000 in the far right 6 column compared to cumulative losses of about \$641,000. 7 So by that point, sometime in 2030, he will have been 8 about break even at that point. 9 Q. So I know that you had incorporated the L&I 10 payments into the mitigation earnings. Did -- where -- 11 I mean, how -- how -- where is that and how can we see 12 that here in this spreadsheet? 13 A. So if you look in the second column -- or the 14 middle -- very middle column that says Mitigation 15 Earnings - Retraining, again, that's the area where I 16 made the mistake before, so the \$19,976 reflects the -- 17 the L&I earnings and then the \$25,610 reflects that. 18 Q. Okay. And how long does that go through? 19 What year does that -- 20 A. I have that -- I have that continuing 21 through -- let's see. I have that continuing through 22 2024. 23 Q. And that's when you assumed that Mr. Nazar 24 would finalize his school? 25 A. Yes.</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. (BY MS. LUKE) So this is the correct 2 calculation that should have been in the Exhibit A 3 second scenario? 4 A. Yes. 5 Q. Okay. So let's mark this as Exhibit G, and 6 it's really an addendum to what you had in Exhibit A. 7 MS. MARTIN: Yes. And it's a 8 substantive change of approximately \$30,000, and then 9 the other change was a net change of zero for Exhibit 10 F. 11 MS. LUKE: Okay. Can we go back to 12 Exhibit F? I just had a couple questions on there. 13 Q. (BY MS. LUKE) Mr. Newton, what are the 14 highlights representing here? 15 A. The highlights -- well, the first highlight 16 just represents the point at which Mr. Nazar would have 17 achieved the median wage of the diesel mechanic that 18 was used by Ms. Tapia, and this is derived from the 19 version where I used the -- from the first report where 20 I used the median wage. I looked at that also this 21 morning. If I used the other approach which gave him 22 an increase over time up to the 75 percentile level it 23 doesn't change really the overall result of the opinion 24 if I use that in the -- for this report. 25 The highlights in the -- in the other two</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Or a bachelor's degree? 2 A. Yes. 3 Q. Okay. Does the mitigation earnings also 4 include the cost of tuition? 5 A. The cost of tuition, let me see here. Yes, it 6 does. So, in other words, you'll notice that in -- 7 before he goes to college, the L&I is about \$25,000 a 8 year, and you'll notice that during the four years 9 where he's going to college it drops to 13,857 per 10 year. So I took out the -- what I subtracted in the 11 calculation I took out -- I subtracted out the cost of 12 tuition out of there. So I -- so that's why that's 13 lower. I reflected the cost of the tuition in that 14 figure. 15 Q. Okay. As far as college or a bachelor's 16 degree, are you making any assumptions as far as how 17 long it will take Mr. Nazar with his injury and 18 accommodations necessary to finish that degree? 19 A. I assumed it would be four years. 20 Q. And in this -- 21 MS. LUKE: Laura, if you could just 22 scroll down a little bit to the bottom, thank you. 23 Q. (BY MS. LUKE) In this scenario that you've 24 outlined here, it looks like the work life expectancy 25 is a little -- is longer now than in your previous</p>

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<p>1 schedule from the old report. Can you explain that?</p> <p>2 A. I don't -- let me just double-check. I don't</p> <p>3 think that's the case. Let's see. Yeah, you're right,</p> <p>4 it probably is because the previous report carried his</p> <p>5 work life out to 2052 and that was based on the</p> <p>6 Skoog-Ciecka tables, the work life tables for a person</p> <p>7 with some college because the assumption he would be --</p> <p>8 in the first report was that he would achieve an</p> <p>9 associate's degree from a junior college. And in this</p> <p>10 report, the newer report, I'm assuming a four-year</p> <p>11 degree. So when you look at the tables, the --</p> <p>12 definitely the work life of an individual goes up as</p> <p>13 they have more education. It's even greater for those</p> <p>14 that get doctorate degrees and professional degrees</p> <p>15 like a lawyer and so forth.</p> <p>16 Q. And so I understand that the work life is</p> <p>17 not -- it's not specific to Mr. Nazar, but with someone</p> <p>18 who is injured and has his damages, do you think it's</p> <p>19 fair to expect a longer work life expectancy for</p> <p>20 someone in his situation if he received a four-year</p> <p>21 degree versus a two-year degree?</p> <p>22 A. I'm not sure I understand the question.</p> <p>23 Q. Can you -- I mean, for Mr. Nazar specifically,</p> <p>24 would you expect that there would be a -- that ten-year</p> <p>25 change in work life expectancy if he had a four-year</p>	<p>1 A. Correct, yeah, what he presumably would have</p> <p>2 been doing but for the injury he suffered.</p> <p>3 Q. Okay. And then -- and I understand your</p> <p>4 opinion as far as the amount of college has changed,</p> <p>5 but if we go down to the end it says in 2052 his work</p> <p>6 life would end in that year; is that correct?</p> <p>7 A. Correct, yes.</p> <p>8 Q. So given that his work life expectancy with no</p> <p>9 GED before injury was 2041, does education totally</p> <p>10 mitigate his ability to continue working despite his</p> <p>11 injuries so that he would be able to continue working</p> <p>12 until 2052?</p> <p>13 A. I don't think I understand the question.</p> <p>14 Q. Do you think his injuries have any bearing on</p> <p>15 his work life expectancy?</p> <p>16 A. I don't know. You mean in terms of where I'm</p> <p>17 assuming or I have calculated from the tables that he</p> <p>18 has a work life through 2052, I guess what you're</p> <p>19 asking me is will his injury -- does that have some</p> <p>20 impact on what his work life might be compared to what</p> <p>21 the tables would show; is that what you're saying?</p> <p>22 Q. Yes, sure, yeah.</p> <p>23 A. I don't -- I don't know. I -- my gut feeling</p> <p>24 is it shouldn't necessarily because these are positions</p> <p>25 or jobs that presumably don't require a lot of</p>
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<p>1 degree versus a two-year degree?</p> <p>2 A. Oh, no, it's not a ten-year change, it's about</p> <p>3 a two-year change. So in this report we have his work</p> <p>4 life through March of 2054, and I'm looking at my other</p> <p>5 report and we have it through the end of 2052. So we</p> <p>6 actually have only about a year and two and a half</p> <p>7 months extra.</p> <p>8 Q. Okay.</p> <p>9 A. Based on the college degree.</p> <p>10 Q. And then if we go to -- actually I'm going</p> <p>11 to -- view options?</p> <p>12 MS. MARTIN: Are you done with these? I</p> <p>13 can share them again later if you need to.</p> <p>14 MS. LUKE: Yeah, I think I am.</p> <p>15 MS. MARTIN: Okay.</p> <p>16 MS. LUKE: Thank you.</p> <p>17 Q. (BY MS. LUKE) So I'm looking at your previous</p> <p>18 report and I understand that the Mitigation Earnings</p> <p>19 column has now been amended, but I just wanted to --</p> <p>20 let's look at this one. If we're at page 21 of Exhibit</p> <p>21 A?</p> <p>22 A. Okay, yes.</p> <p>23 Q. Okay. So in the far left, we have a work life</p> <p>24 ends at 2041 if Mr. Nazar does not receive his GED, if</p> <p>25 he stays as is without any retraining; is that correct?</p>	<p>1 physical -- strenuous physical activity to do the job.</p> <p>2 It's more of a professional type of a job, kind of like</p> <p>3 what we all do, but different obviously, but it's a</p> <p>4 professional position that doesn't depend on his</p> <p>5 physical capabilities -- or it would seem to me.</p> <p>6 Q. Are you aware of any accommodations that</p> <p>7 Mr. Nazar would need in any position, I guess, that</p> <p>8 isn't physical? So for the four or, I guess, several</p> <p>9 positions that Mr. Gann has outlined, would Mr. Nazar</p> <p>10 need any accommodations still to perform the duties</p> <p>11 necessary?</p> <p>12 MS. MARTIN: Objection, outside the</p> <p>13 scope of this witness's testimony. You can answer.</p> <p>14 A. I don't know. Yeah, I couldn't tell you what</p> <p>15 accommodations might be necessary. It's possible with</p> <p>16 using a computer he would have to use more voice</p> <p>17 recognition. I don't know to the extent that he would</p> <p>18 be impaired to use both hands for typing and so forth,</p> <p>19 but my understanding there are ways to mitigate that</p> <p>20 circumstance so that somebody can use a computer.</p> <p>21 Beyond that, I don't know what other needs he might</p> <p>22 have.</p> <p>23 Q. (BY MS. LUKE) Let's see, we're still on</p> <p>24 Exhibit A. In your previous report where you -- and</p> <p>25 I'm going back to page 5 of Exhibit A, we already</p>

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<p style="text-align: right;">Page 45</p> <p>1 talked about this, but one of the assumptions you made</p> <p>2 was that Mr. Nazar reaches the median level wage for a</p> <p>3 diesel mechanic, but does not increase after that</p> <p>4 except for normal inflation.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. It was the second-to-last bullet point there?</p> <p>8 A. Yes, yes, I have it here.</p> <p>9 Q. Okay. Is your -- what do you base that median</p> <p>10 off of? What is the basis for that conclusion?</p> <p>11 A. Well, it's an assumption, so it's not -- but I</p> <p>12 think what I was thinking at the time was that -- that</p> <p>13 despite the fact that Ms. Tapia was using a vocational</p> <p>14 rehabilitation expert to obtain some of these earnings,</p> <p>15 including that Mr. Nazar might be able to achieve the</p> <p>16 75 percentile level for that wage category, is that</p> <p>17 when we look at the historical earnings for Mr. Nazar,</p> <p>18 he typically wasn't at a completely full-time level</p> <p>19 based on his history. So to me that brought into some</p> <p>20 question -- some question into my mind that perhaps</p> <p>21 that he might not attain the level of 75 percentile, so</p> <p>22 that's why I offered that as a -- as a -- an approach</p> <p>23 to determine what his damage might be if he reaches the</p> <p>24 median level.</p> <p>25 Q. Okay. And this may be -- and hopefully it</p>	<p style="text-align: right;">Page 47</p> <p>1 curious what those are about.</p> <p>2 A. I don't know. This probably was prepared by</p> <p>3 Mr. Howell. I didn't ask him about what these</p> <p>4 highlights mean.</p> <p>5 Q. Okay. Okay. Let's go back to Exhibit A. I</p> <p>6 guess my main concern is what opinions from Exhibit A</p> <p>7 do you no longer have or are replaced by your opinions</p> <p>8 in Exhibit B, and I want to start at -- I think it's</p> <p>9 page 7.</p> <p>10 A. Okay.</p> <p>11 Q. So at the top of page 7 you are assuming the</p> <p>12 same inflation rate that Dr. Tapia did at 2.175 percent</p> <p>13 for future wages; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And is that continued on in your calculation</p> <p>16 in Exhibit B?</p> <p>17 A. Exhibit B? Sort of. I kind of changed what I</p> <p>18 did in Exhibit D. It's a very similar calculation, but</p> <p>19 I -- normally what I use is a concept called net</p> <p>20 discount rate which Ms. Tapia has not used and so what</p> <p>21 I use typically for a net discount rate for lost</p> <p>22 earnings is a 1 percent net discount rate, and what</p> <p>23 that number reflects is the -- it reflects the</p> <p>24 relationship between inflation and interest rates.</p> <p>25 So in simple terms, the -- over a long period</p>
<p style="text-align: right;">Page 46</p> <p>1 isn't redundant. I did want to go into the Nazar</p> <p>2 schedule. I think we've marked those as Exhibit --</p> <p>3 let's see, what are they, C, and those are dated</p> <p>4 4/16/20?</p> <p>5 A. And these are the Excel schedules?</p> <p>6 Q. Yes, yeah.</p> <p>7 A. Okay, I have those open.</p> <p>8 Q. Great. So I think this includes all of your</p> <p>9 calculations in both Exhibit A and B. Is that correct?</p> <p>10 A. This is for -- particularly for Exhibit B, my</p> <p>11 second report, right, that's B?</p> <p>12 Q. Okay.</p> <p>13 A. And then -- I mean, they're similar looking to</p> <p>14 what I had in the first report. I used the first</p> <p>15 report as a template for these, but there's a separate</p> <p>16 Excel file for the first report.</p> <p>17 Q. I guess my question, if we go to the last tab,</p> <p>18 Tapia Calc?</p> <p>19 A. Yes.</p> <p>20 Q. Can you explain what this is.</p> <p>21 A. I think what this is -- I didn't really focus</p> <p>22 on this that we prepared -- was just it's a</p> <p>23 regurgitation of what Ms. Tapia had calculated.</p> <p>24 Q. Okay. And then I just noticed that there's a</p> <p>25 bunch of highlights under Discount Factor and I'm</p>	<p style="text-align: right;">Page 48</p> <p>1 of time, over like 25 years or so, the interest rates</p> <p>2 on safe government-backed securities averages about 1</p> <p>3 percent more than what inflation is. So you get a 1</p> <p>4 percent discount rate. So I do that rather than trying</p> <p>5 to determine what the particular inflation rate might</p> <p>6 be for a particular type of job, and part of that is to</p> <p>7 avoid kind of a misconception when you look at the</p> <p>8 amount of wage.</p> <p>9 For instance, Ms. Tapia calculates at some</p> <p>10 point that -- I believe they get up to \$135,000 a year</p> <p>11 or more for a diesel mechanic after 30 or 40 years of</p> <p>12 work, and that seemed like a high number, so it's hard</p> <p>13 to know whether that inflation rate that she uses --</p> <p>14 which is for all wages, but the inflation rate that</p> <p>15 Ms. Tapia is using is not just for diesel mechanics,</p> <p>16 it's for kind of all wage categories for the most part,</p> <p>17 and so --</p> <p>18 Q. I guess my question was is it the same rate of</p> <p>19 inflation that you're using in your new report?</p> <p>20 MS. MARTIN: Excuse me, I was on mute.</p> <p>21 You cut him off so I'd like to let him finish answering</p> <p>22 the question and then you can answer -- you can ask the</p> <p>23 question, Rachel. So, Mr. Newton, if you want to</p> <p>24 finish what you were saying.</p> <p>25 A. Sure. I was just saying, yeah, so that's why</p>

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<p style="text-align: right;">Page 49</p> <p>1 I tend to avoid -- not always, there's some cases where 2 I would use a similar approach that Ms. Tapia used 3 here, but most of the time I'm using the net discount 4 rate. So the other side of the inflation rate, the 5 other concept is the interest rate that you discount 6 earnings for and so that's why I believe that 7 relationship between inflation and interest over a long 8 period is about a 1 percent difference, and so I -- 9 I've kind of backed into the interest rate in my 10 calculation in the first report to get to a net 11 discount rate of 1 percent. In the second report 12 you'll note if you look at the details of it I just 13 used the 1 percent discount rate. 14 Q. Okay. So you're getting that 1 percent 15 discount rate -- you say it's the 1 -- or 3.175 percent 16 minus 2.175 percent? 17 A. Correct. 18 Q. To get the 1 percent? 19 A. Correct. 20 Q. And I guess my question is where are you -- 21 where does -- what is the source for the 3.175 discount 22 rate? 23 A. Well, it's basically -- actually it's backing 24 into it to get to a 1 percent discount rate. The 1 25 percent discount rate is based upon -- I'm looking at</p>	<p style="text-align: right;">Page 51</p> <p>1 for the most part we're using -- we're pretty 2 consistent on using 1 percent net discount rate. Where 3 we vary, for instance, if somebody has a pension, say 4 I -- I do a lot of asbestos cases and so quite often 5 the assumption is that the injured party or sometimes 6 it's a wrongful death case where the injured party or 7 decedent had a pension and sometimes those pensions do 8 not have cost of living adjustments. So in those 9 cases, rather than using a net discount rate I use a 10 discount rate because there is no inflation for that 11 type of income stream as an example. 12 Q. Okay. So let's go back to page 12 on 13 Exhibit A. These are your recent testimonies. In that 14 Lassen Tour & Travel, Inc. v. Ctour Holiday, LLC, do 15 you know if you used that 1 percent net discount rate 16 in your opinion? 17 A. That -- I did not. That is a -- trying to 18 think if I used a discount rate. I think the damages 19 are all past -- if I recall correctly, past damages. 20 It doesn't involve a personal injury. It's a dispute 21 between two companies over unfair competition. 22 Q. Okay. What about Lynnwood Health Services, 23 Inc. v. Affiliated FM Insurance Company, et al., did 24 you use that 1 percent net discount rate there? 25 A. No. Those are -- again, those are all past</p>
<p style="text-align: right;">Page 50</p> <p>1 the schedules -- which one was the Excel file, Exhibit 2 D? 3 Q. Let me see here. 4 MS. MARTIN: E, Exhibit E is the Excel 5 file for the second report. The Excel file for the 6 first report has not been marked as an exhibit. 7 A. Okay. So if you look at Exhibit E. 8 Q. (BY MS. LUKE) Okay. 9 A. And -- it wasn't part of the PDF printout of 10 the report, but if you look at that Excel file there's 11 a tab called Data 2.0, and that accumulates all sorts 12 of wage growth, inflation, interest rates and so forth 13 that we update each year and utilize to estimate what 14 we think discount rates are, and that's -- that's where 15 I derive basically my 1 percent discount rate. 16 Q. Okay. So this is -- I'm sorry, that -- in 17 Exhibit E, that Data 2.0, this is something that your 18 firm has put together, this spreadsheet? 19 A. Yes. We -- we often have it in the Excel 20 workbook as a spreadsheet. 21 Q. And so you just always rely on that net 22 discount rate of 1 percent in all of your reports that 23 you create for your forensic accounting? 24 A. Not all, there are some reasons why we would 25 use a different rate in particular circumstances, but</p>	<p style="text-align: right;">Page 52</p> <p>1 damages in that case, so there wouldn't be a discount 2 rate applied. 3 Q. What about -- 4 A. And, again, it's not -- not a personal -- 5 those are -- and just to help -- 6 Q. Sure. 7 A. -- be a little efficient on the deposition, 8 pretty much anything on this page, this is called 9 General Litigation, so most of this -- these cases are 10 going to be commercially related litigation matters, 11 disputes between companies. 12 Q. Okay. So -- 13 A. There's another section later on that's the 14 asbestos litigation and those are all personal injury/ 15 wrongful death cases. 16 Q. I'm sorry, which page is that asbestos 17 litigation? 18 A. Yeah -- 19 MS. MARTIN: 15. 20 A. Yeah, so in the general litigation, I'm not 21 usually using a net discount rate that I can think of. 22 There may be some personal injury cases on that list 23 where I would be because I've excluded the asbestos 24 into a separate category because I've done a lot of 25 asbestos, but everything on the asbestos page is going</p>

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<p style="text-align: right;">Page 53</p> <p>1 to be personal injury/wrongful death. 2 Q. (BY MS. LUKE) Okay. So on -- I guess 3 starting on page 15, did you use the 1 percent net 4 discount rate on all of these cases? 5 A. I would say yes. The only exception -- the 6 exceptions would be -- and I -- would be in some of 7 these likely there's a plaintiff who had a pension 8 without a cost of living adjustment, so there we 9 wouldn't use the 1 percent, and we might be using 2 or 10 3 percent in those cases. Also, in a few of these 11 categories, a couple here and there might have been 12 plaintiffs who owned a business, and in some of those 13 when it's a business I don't use the net discount rate, 14 I use a business risk adjusted rate. 15 Q. Okay. 16 A. Which is usually far greater than a 1 percent 17 discount rate. 18 MS. MARTIN: Rachel, before we -- can we 19 just take a quick three-minute break if you don't mind? 20 MS. LUKE: Sure. Let's do about ten 21 minutes? 22 MS. MARTIN: Sure. 23 (Recess taken.) 24 Q. (BY MS. LUKE) As far as your opinion in the 25 report that was submitted yesterday, do you preserve</p>	<p style="text-align: right;">Page 55</p> <p>1 MS. LUKE: Well, actually, I was going 2 to have him turn to that on his report. 3 Q. (BY MS. LUKE) Mr. Newton, if you could point 4 that out to me, I'm not familiar with -- 5 MS. MARTIN: It's not contained in 6 either of the documents. 7 A. Oh, yeah, no. Yeah, I didn't complete that 8 until last night. 9 Q. (BY MS. LUKE) Okay. Why don't you go ahead 10 and walk me through that then. 11 A. On the life care plan? Do you have -- 12 MS. MARTIN: I can screen share it for 13 you. You should see it. It's an 11-page PDF. There 14 you go. 15 Q. (BY MS. LUKE) All right. And so this has 16 never been submitted to plaintiffs before? 17 A. No. 18 MS. MARTIN: No. 19 A. Well, unless -- and I don't -- I'm assuming it 20 wasn't, yeah. I -- I sent it to counsel last night. 21 Q. (BY MS. LUKE) Okay. And when were you asked 22 to provide this? 23 A. Yester -- 24 MS. MARTIN: Objection, asks for 25 privileged information.</p>
<p style="text-align: right;">Page 54</p> <p>1 any of your opinions that are in your March 9th report? 2 A. I didn't quite catch the word. Do I what any 3 of my opinions? 4 Q. Are you preserving any of those opinions? 5 MS. MARTIN: Objection, asked and 6 answered. You may answer again. 7 A. Well, I'm preserving them at least in regard 8 to being a comparison or a critique of aspects of 9 Ms. Tapia's calculations. 10 Q. (BY MS. LUKE) Understood. So you're not 11 going to offer any opinions as to the standard of care, 12 causation or the life care plan and costs? 13 A. No, no, I don't -- those are outside of my 14 role, other than for the life care plan where we've 15 discounted the cost to present value. 16 Q. And you've never medically assessed 17 Mr. Nazar's future needs? 18 A. No. 19 Q. Are you qualified to prepare a medical care 20 plan for any -- anybody? 21 A. No. 22 Q. If you can turn to -- 23 MS. MARTIN: He has calculated the net 24 discount of the life care plan offered by Gann if you 25 want to see it, but if not, that's fine.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Sorry, I answered too quickly. 2 COURT REPORTER: I didn't hear the 3 answer. What was your answer, Mr. Newton? 4 THE WITNESS: I said yes -- 5 MS. MARTIN: He said yesterday. 6 Q. (BY MS. LUKE) Okay. So why don't you walk me 7 through this. I see you have -- 8 A. Sure. 9 Q. We're on page 3. Is that the -- 10 MS. MARTIN: It's -- there you go. Page 11 1 is title, page 2 is the index, page 3 starts the 12 substantive information. 13 A. Page 3 is a summary of the costs and we've 14 categorized it by different categories of services, and 15 we show a -- the non-discounted costs along with the 16 discounted amount. And so overall the total costs 17 including the contingent on an outcome of surgery is 18 \$380,000 which is discounted at present value as of 19 August 15, 2020 at \$314,000, approximately. 20 Q. (BY MS. LUKE) Okay. And so -- 21 A. To provide for detail. 22 Q. And I think you've already mentioned this, but 23 you have not consulted with Mr. Gann to prepare this; 24 is that correct? 25 A. No, correct.</p>

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<p>1 Q. This is based on -- purely on his report?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Let's go ahead and mark this as</p> <p>4 Exhibit H and Laura can circulate afterwards. Should</p> <p>5 we go down to Schedule 2?</p> <p>6 A. Sure.</p> <p>7 Q. Okay. And so these are your calculations?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So you have Physician Services, a</p> <p>10 one-time evaluation with the hand surgeon?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And these unit costs, are those</p> <p>13 provided to you by Mr. Gann?</p> <p>14 A. Yes.</p> <p>15 Q. And the frequency, that was also provided by</p> <p>16 Mr. Gann?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And so you are only calculating the</p> <p>19 discounted costs total?</p> <p>20 A. Correct, correct.</p> <p>21 Q. Okay. And that's -- we see that in the far</p> <p>22 right column?</p> <p>23 A. Correct, yeah.</p> <p>24 Q. Okay. And so this is a --</p> <p>25 A. There's no -- yeah, and to know -- just so you</p>	<p>1 range, I'm looking at the household assistance, and he</p> <p>2 said two to four times per month for life, how did you</p> <p>3 calculate that? Did you make -- did you create a range</p> <p>4 in your total?</p> <p>5 A. I know on one where he said three to five</p> <p>6 years we used four years. Let me look at the</p> <p>7 calculation itself so I can -- because I can check the</p> <p>8 formula in there for it. I just need to open up that</p> <p>9 file. And this is the Orthocor, and you were looking</p> <p>10 at the -- which item were you looking at now? Oh,</p> <p>11 household --</p> <p>12 Q. Yeah, that's just an example.</p> <p>13 A. Yes, we assumed three. So if you look in</p> <p>14 the -- the figure that -- under Frequency?</p> <p>15 Q. Uh-huh.</p> <p>16 A. And you look you see 36.0?</p> <p>17 Q. Yes.</p> <p>18 A. For that line item, that's three times per</p> <p>19 month. So where he -- Mr. Gann indicated two to four</p> <p>20 times per month we took the average of three.</p> <p>21 Q. Okay. Is there a reason why you didn't</p> <p>22 provide a range?</p> <p>23 A. Well, we could have. I could have done the</p> <p>24 low and high, but I just decided to use -- we decided</p> <p>25 to use an average.</p>
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<p>1 understand the organization, if you could scroll down</p> <p>2 just slightly so we see the titles, yeah. So in the</p> <p>3 second column we show page and item, so if you look at</p> <p>4 Mr. Gann's report he has about a six-page-long document</p> <p>5 that lists out all the different services and costs.</p> <p>6 Q. Uh-huh.</p> <p>7 A. And so, for instance, with the first item up</p> <p>8 there on this page that says Orthocor system 4.6, so</p> <p>9 that's on page 4 and it's the sixth line item down</p> <p>10 where he has numbers. Now, not all of the line items</p> <p>11 that Mr. Gann talks about in his report show -- show</p> <p>12 costs for various reasons. So we've included all of</p> <p>13 the categories that include a cost that we then</p> <p>14 extrapolate out over the -- over the period indicated</p> <p>15 by Mr. Gann and then we discount it. But I just -- so</p> <p>16 if you turn to page 4 of Mr. Gann's -- not his report</p> <p>17 but the section where he does the calculations on the</p> <p>18 life care plan, you would look at the 6.5 and down on</p> <p>19 that page and find this item.</p> <p>20 Q. Okay. So as far as -- I guess there's a</p> <p>21 couple things. As far as items where there was no</p> <p>22 costs included in Mr. Gann's report you have not</p> <p>23 calculated those; is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And then if, for example, there is a</p>	<p>1 Q. Okay. If we could just go back up to the</p> <p>2 summary, and so this is basically a summary of your</p> <p>3 opinion with regard to the discounted rate for the life</p> <p>4 care plan; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Is there anything else on this -- I</p> <p>7 don't know if it's a PDF that you wanted to discuss as</p> <p>8 far as relating to your opinions on that life care plan</p> <p>9 value?</p> <p>10 A. Sure. If we go back down to Schedule 2 again</p> <p>11 and maybe go to the first page, so -- so the reason why</p> <p>12 we didn't just list out each item, you know, page -- we</p> <p>13 kind of start off that way on this page with -- under</p> <p>14 Physician Services, Item 1.1, 1.2, 1.3, but then you</p> <p>15 see we jump to 2.5. So what we did was to group -- we</p> <p>16 looked through the listing of all the -- of the costs</p> <p>17 that Mr. Gann listed and we categorized them into</p> <p>18 categories, so in this case physician services, and</p> <p>19 that was so that we could apply a particular discount</p> <p>20 rate for that category.</p> <p>21 So, for instance, you'll see in the column</p> <p>22 over to the right that's entitled 1x cost, first year,</p> <p>23 and you look down a couple of rows there you see a 0.19</p> <p>24 percent.</p> <p>25 Q. Yes.</p>

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<p>1 A. That's the discount rate we used. Okay?</p> <p>2 Q. Okay.</p> <p>3 A. So as opposed to a -- the net discount rate</p> <p>4 I'm using for the earnings, the wages of 1 percent,</p> <p>5 we're using different types of rates for the medical</p> <p>6 costs.</p> <p>7 Q. Okay.</p> <p>8 A. And in some cases it's a negative discount</p> <p>9 rate. In other words, if you go down to</p> <p>10 Hospitalizations on that page, you'll see the negative</p> <p>11 1.41. So where the cost for that surgery is \$40,000,</p> <p>12 the present value of it is \$40,285, so it's a little</p> <p>13 bit higher because according to the -- you know, over</p> <p>14 the last 30 years, the cost of hospitalization has</p> <p>15 exceeded, you know, interest rates.</p> <p>16 Q. Okay. So as far as your -- whatever --</p> <p>17 whatever rate is in that 1x column, what is the basis</p> <p>18 or source that you're using to come up with that</p> <p>19 percentage rate?</p> <p>20 A. Right. So if you scroll down to -- let's see,</p> <p>21 Schedule 4.0, that provides -- that page there -- yeah,</p> <p>22 let's stop there for a moment. So this is Schedule</p> <p>23 4.0, and so what we're saying is that where we think</p> <p>24 there's a -- if we look just at the discount rate, we</p> <p>25 would project a negative discount rate, it's kind of a</p>	<p>1 back on their website?</p> <p>2 A. I believe so. I can double-check that and see</p> <p>3 what the exact source is, but -- but we're using</p> <p>4 generally government studies to derive these inflation</p> <p>5 rates.</p> <p>6 Q. Okay. And when you say "we," are you</p> <p>7 referring to the -- Mr. Howell and Mr. McLaughlin?</p> <p>8 A. In this case I'm referring to Mr. McLaughlin</p> <p>9 who's, like I said earlier, a senior economist, so</p> <p>10 he -- I generally have him prepare these calculations</p> <p>11 for me. I -- and then I reviewed it yesterday. I</p> <p>12 actually changed it. I changed the premium rates to</p> <p>13 the 30-year average which slightly increased the</p> <p>14 discount value.</p> <p>15 Q. What did he calculate it at?</p> <p>16 A. He calculated the -- it wasn't much of a</p> <p>17 change, but if you go back to -- let's see, if I look</p> <p>18 at Schedule --</p> <p>19 COURT REPORTER: Can you hear him? I</p> <p>20 can't hear him.</p> <p>21 (Discussion off the record.)</p> <p>22 COURT REPORTER: "At Schedule," and then</p> <p>23 if you could pick up from there, I'm sorry.</p> <p>24 A. Sure. Schedule 1.0, I've calculated \$314,000,</p> <p>25 and Mr. McLaughlin's calculation using his rates was</p>
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<p>1 real discount rate of 1 percent, and we calculate it on</p> <p>2 a subsequent schedule, what we call the premium over</p> <p>3 inflation, in other words, the amount cost of these</p> <p>4 medical services have either been more than or less</p> <p>5 than overall inflation, general inflation based on CPI,</p> <p>6 and then we add those two together and we get the</p> <p>7 discount rate we use for each category.</p> <p>8 The basis for these figures in the middle</p> <p>9 column are shown on the subsequent schedule, 4.1, and</p> <p>10 this lists the various indices or increase rates for</p> <p>11 each of these categories over -- going back to 1978,</p> <p>12 and if you go down to Schedule -- the next page on 4.1,</p> <p>13 we summarize the -- we calculate averages and I've used</p> <p>14 the 30-year average for the premium. So if you look at</p> <p>15 the bottom page, bottom line on this page it shows the</p> <p>16 premium -- premium over inflation for each category,</p> <p>17 and that's derived from the 30-year average which you</p> <p>18 can see kind of up in the middle of that page where</p> <p>19 we've calculated for the average.</p> <p>20 Q. So these numbers, which source did they come</p> <p>21 from?</p> <p>22 A. They come from generally the Bureau of Labor</p> <p>23 Statistics.</p> <p>24 Q. Okay. So if I looked up any of these on the</p> <p>25 Bureau of Labor Statistics I would be able to track it</p>	<p>1 about \$311,000 as I recall.</p> <p>2 Q. (BY MS. LUKE) Okay. So as far as your</p> <p>3 opinions in this case, as we sit here today, are they</p> <p>4 contained within what we've discussed today in your</p> <p>5 deposition, this life care plan present value</p> <p>6 calculation document that we received today and the two</p> <p>7 reports you've already produced?</p> <p>8 A. I believe so. I guess I haven't fully</p> <p>9 commented on some critiques of Ms. Tapia's approach.</p> <p>10 Q. Okay. I do have some questions about that, if</p> <p>11 we go back to Exhibit A. Now, I -- I believe that you</p> <p>12 have -- on page 5 you discuss some of the assumptions</p> <p>13 that Dr. Tapia makes. I believe that you have adopted</p> <p>14 some of those assumptions and not others. So if we</p> <p>15 could go through maybe your bullet points here?</p> <p>16 A. Sure.</p> <p>17 Q. So the first one you said that Dr. Tapia</p> <p>18 assumes that Mr. Nazar would have worked full time</p> <p>19 throughout his work life. Is that an assumption that</p> <p>20 you are making?</p> <p>21 A. I have, yes.</p> <p>22 Q. Okay. That work life of 24.5 years at the</p> <p>23 time of the accident for one approach, that was one of</p> <p>24 Dr. Tapia's assumptions?</p> <p>25 A. Correct.</p>

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<p>1 Q. And then the other approach was work life of 2 approximately 40 years to age 67 or full social 3 security retirement age. 4 A. Correct. 5 Q. She assumed that Mr. Nazar would have 6 increased his earning capacity for a diesel mechanic in 7 the Spokane area to the median level by age 32, the 8 75th percentile wage by age 37 to 38 and the 90th 9 percentile at age 45; is that correct? 10 A. Correct. 11 Q. And then she assumed that Mr. Nazar might not 12 obtain further education and would have to accept 13 minimum wage jobs for only part-time work 20 hours a 14 week because of his injury. And then the last -- 15 A. Correct. 16 Q. Sorry. And then the last one that you have 17 there was her assumption that Mr. Nazar might be able 18 to obtain his GED and a two-year associate's degree in 19 order to obtain a better replacement job and earn more 20 than minimum wage. So if you want to go through that, 21 with regard to work life, I think that you had 22 differences in that approach. Can you tell me what 23 your approach is on work life? 24 A. Well, I used the same work life I believe in 25 the first report, this report for 24 and a half years</p>	<p>1 to that point in time is probably -- it doesn't even 2 show on the tables. It's probably less than 5 percent. 3 So the chance that he would work until that age is 4 certainly under 10 percent and probably under 5 5 percent. It makes it very unlikely that that would 6 occur and, therefore, speculative. 7 Q. Do you -- I mean, given that Mr. Gann is 8 assessing that Mr. Nazar is in the 95th percentile in 9 his IQ, does that change your analysis as far as that 10 point? Mr. Gann's opinion to me seems that Mr. Nazar 11 has unlimited potential. 12 A. Well, I certainly think his IQ level certainly 13 has a bearing on Mr. Gann's opinions and findings with 14 regard to Mr. Nazar and his ability to obtain a 15 four-year degree and so certainly pertinent to that. 16 But prior to injury he didn't have a GED and the tables 17 for somebody at that level show what the work life is 18 at a far lower rate than age 67, and so I -- the thing 19 is is that neither Dr. Tapia or I or Mr. Gann or 20 Mr. Choppa, Choppa, can predict what would have 21 occurred with Mr. Nazar in his work life had he not 22 been injured, and so what we revert to are objective 23 studies like these work life tables that are based on 24 government statistics and then utilized by renowned 25 economists in the field to develop these tables.</p>
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<p>1 based on his educational level and as the but for work 2 life if he had not been injured. So it was the same in 3 that regard. However, a couple things on the work 4 life. Although I think Ms. -- Dr. Tapia, I call her 5 Dr. Tapia, sorry, Dr. Tapia's approach there is 6 correct, the way she applies the work life for a part 7 college under -- assuming her assumption where he gets 8 retrained and has higher education is that in one of 9 her scenarios she stops the assumption of work life for 10 the new job at the same age, and I think that's 11 inappropriate because he has a longer work life with 12 the higher educational level. So she didn't offset the 13 extra ten years roughly according to the tables that 14 Mr. Nazar would have been able to work with the part 15 college approach that would tend to offset the losses 16 that occurred up to the 24 and a half year point in 17 time. 18 My other critique on the work life is the 19 assumption that he would work until 67 social security 20 retirement level, and based on the tables for somebody 21 at his educational level before injury, it's -- it's 22 speculative for Ms. Tapia to assert that approach, and 23 I say it's speculative because that's even beyond the 24 90 percentile. In other words, that's the -- that -- 25 the percentage of people that would achieve a work life</p>	<p>1 We revert to those sources because we don't 2 have any way to know. We don't know whether he would 3 have worked only 15 more years, we don't know whether 4 he would have worked 40 years, but if we use the tables 5 and use the median level which is the 50 percent point 6 where it becomes more probable than not, then we're 7 achieving something -- we're utilizing something that's 8 objective in my mind. That's why Dr. Tapia did, in 9 fact, use the tables to some extent and that's why I 10 use the tables and most economists that I see use the 11 similar tables that we used in this case. 12 Q. Okay. As far as the increasing of earning 13 capacity, I think you had different or differing 14 opinions from Dr. Tapia on that as well? 15 A. I think the only thing is I didn't get him up 16 to the 90 percent level, percentile level. I think I 17 stopped at 75 percent level. 18 Q. Okay. 19 A. And then I had the second alternative where I 20 assumed he just reached the median level. 21 Q. Okay. And then the other assumption was 22 regarding his -- that he may not obtain further 23 education and would have to accept minimum wage jobs if 24 he doesn't get retraining? 25 A. Yes, I think I did use the minimum wage job,</p>

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<p style="text-align: right;">Page 69</p> <p>1 but I assumed that he would be capable of working 40 2 hours per week.</p> <p>3 Q. And that was -- assumption was in -- I guess 4 correlation to Mr. Gann's report?</p> <p>5 A. No, because I prepared this report before I 6 had Mr. Gann's report.</p> <p>7 Q. Okay. Maybe I should distinguish. I'm 8 wondering -- I want to know if that's -- if these are 9 your current opinions still today. So --</p> <p>10 A. Oh, yes, it is. In other words, I -- I saw 11 that Mr. Choppa indicated he might only be able to work 12 20 hours per week, but in looking at everything I 13 couldn't see why that was necessarily the case because 14 of his disability that he wouldn't be able to obtain 15 full-time education, I -- I just didn't see a reason -- 16 I mean full-time work at 40 hours per week. So that's 17 where I differ in opinion with what Mr. Choppa provided 18 in his report that Dr. Tapia relies upon.</p> <p>19 Q. Okay. Are there any other of Dr. Tapia's 20 analysis or assumptions that you disagree with here?</p> <p>21 A. I think that was it.</p> <p>22 Q. Okay.</p> <p>23 A. I think we've covered the differences in 24 opinion that I have. We do have a slight difference of 25 opinion on the discount rate. I don't think it's --</p>	<p style="text-align: right;">Page 71</p> <p>1 trial?</p> <p>2 A. I have no such plans at this point. If 3 counsel directs me to do that for some reason, I would 4 do it, of course.</p> <p>5 Q. And is -- have we talked about all of your 6 opinions you intend to testify about at trial?</p> <p>7 A. I believe so, yes.</p> <p>8 MS. LUKE: So I don't believe I have any 9 other questions for you today. I am going to reserve 10 the right to continue this deposition with regard to 11 the new opinions that were produced last night and 12 today after I have the chance to review them. Laura?</p> <p>13 MS. MARTIN: No questions at this time. 14 And feel free to ask Mr. Newton, but I believe he would 15 like to reserve his right to read and sign.</p> <p>16 THE WITNESS: Yes, I would.</p> <p>17 MS. LUKE: All right. And, Patsy, I 18 will order an electronic copy, please.</p> <p>19 MS. MARTIN: Same here, please. 20 (Exhibits Nos. A - H were marked.) 21 (Deposition concluded at 12:15 p.m.) 22 (Reading and signing was requested 23 pursuant to FRCP Rule 30(e).) 24 25</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. Yeah.</p> <p>2 A. I don't know how much it is, but it's slightly 3 different there.</p> <p>4 Q. Do you typically take notes as you're 5 coming -- as you're working on your reports or coming 6 up with opinions?</p> <p>7 A. Typically not. We usually -- in most of the 8 cases we put reports in -- we put the notes in the 9 reports. So, for instance, on the Excel file that you 10 have, if you looked at Data 1.0 and Data 2.0, things of 11 that nature, in our reports a lot of times those 12 include the notes that we derive from source documents 13 in the file like interrogatories, sometimes deposition 14 notes. So we didn't really have all of that in this 15 case to speak of. We do have a Data 1.0, but if we had 16 a lot of notes we typically put them in the report.</p> <p>17 Q. Okay. So you didn't -- you didn't take any 18 notes on the depositions other than what's noted here 19 in the Data 1.0 or 2.0?</p> <p>20 A. Correct, I did not.</p> <p>21 Q. Did you -- have you discussed the case with 22 any other experts that were retained in this case?</p> <p>23 A. No.</p> <p>24 Q. And do you have any current plans to consult 25 or discuss this case with Mr. Gann between now and</p>	<p style="text-align: right;">Page 72</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 STATE OF WASHINGTON) 4) 5 COUNTY OF KING)</p> <p>6</p> <p>7 I, Patricia D. Jacoy, a Certified 8 Shorthand Reporter in and for the State of Washington, 9 do hereby certify that the foregoing transcript of the 10 deposition of MARK R. NEWTON, CPA taken on 11 April 21, 2020 is true and accurate to the best of my 12 knowledge, skill and ability.</p> <p>13</p> <p>14 <i>Patricia D. Jacoy</i> 15 Patricia D. Jacoy, CSR 2348 </p> <p>16 17 18 19 20 21 22 23 24 25</p>

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ERRATA

CASE NAME: Nazar v. Harbor Frieght Tools USA, Inc.

DATE TAKEN: 04/21/2020

WITNESS: Mark R. Newton, CPA

CORRECTIONS

Page	Line	Now Reads	Should Read
		NONE	
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Signature of Deponent



DECLARATION

CASE NAME: Nazar v. Harbor Frieght Tools USA, Inc.

DATE TAKEN: 04/21/2020

WITNESS: Mark R. Newton, CPA

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the ERRATA flyleaf page hereof.

A handwritten signature in black ink, appearing to read "Mark R. Newton", is written over a horizontal line.

Mark R. Newton, CPA

Signed on the 13TH day of May, 2020.